Supreme Court of the United States

No. 79-108

MILA K. CAMERON, PETITIONER

vs

HONORABLE JOE R. GREENHILL, ET AL, RESPONDENTS

PETITION FOR WRIT OF CERTIORARI

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512 477 4210

ATTORNEY FOR PETITIONER

I N D E X

LIST OF AUTHORITIES

LIST OF AUTHORITIES (cont'd)

OTHERS:

SUPREME COURT OF THE UNITED STATES

MILA K. CAMERON, Petitioner

VS NO._____

HONORABLE JOE R.
GREENHILL, ET AL, Respondents

PETITION FOR WRIT OF CERTIORARI

FROM ACTIONS BY THE COURT OF CIVIL APPEALS

FOR THE THIRD SUPREME JUDICIAL DISTRICT

OF TEXAS AND THE SUPREME COURT

OF THE STATE OF TEXAS

TO THE HONORABLE COURT:

I. (SC Rule 23(1) (a))

The actions complained of arise out of the opinion of The Court of Civil Appeals for the Third Supreme Judicial District of Texas set out in 577 SW (2) 389 (APPENDIX 0):

(NOTE: The referenced opinion reflects that a Motion for Rehearing in that Court was denied a week after the opinion was handed down.)

and the opinion of The Supreme Court of Texas set out in 22 Texas Supreme Court Journal 385, ____SW(2)____ (APPENDIX P).

(NOTE: This opinion reflects that an Application for Writ of Error from the Court of Civil Appeals was REFUSED. This refusal makes the Court of Civil Appeals' opinion, in word and effect, that of the Supreme Court's; see Rule 483, Texas Rules of Civil Procedure - herein TRCvP.)

II. (SC Rule 23[1][b])

(i,ii) The judgment of the Court of Civil Appeals was dated February 21, 1979; rehearing in that Court was denied on February 28, 1979 (APPENDIX O). The judgment of the Supreme Court was dated May 30, 1979 (APPENDIX P) and rehearing in that Court was denied on June 27, 1979 (APPENDIX R). The Mandate was issued by the Court of Civil Appeals pursuant to Rule 507 TRCvP on June 29, 1979 (APPENDIX S).

(iii) It is respectfully submitted that 28 USC §1257, subsection (3), confers jurisdiction on this Court to review the actions of the Courts below. (APPENDIX A).

III. (SC Rule 23(1) (c))

The questions presented for review by this Court are two in number, as follows:

ONE: The Texas Legislative Scheme for the control of the Statewide Profession of the Practice of Law (a profession affected with a public interest) was construed by the Courts below in such a fashion as to deprive the Petitioner, a practicing lawyer, of a valuable property right, her law license, without prior due process of law (in the absence of any great urgent public need); the construction of which Legislative Scheme is repugnant to the Constitution of the United States.

TWO: The Supreme Court of the State of Texas - in refusing its own disqualification (and/or recusal) - denied Petitioner due process of law under the teachings of IN THE MATTER OF LEE ROY MURCHISON AND JOHN WHITE, 349 US 133; 99 LE 942; 75 SC 623 (herein called MURCHISON).

IV. (SC Rule 23(1) (e,f))

The facts in this case are undisputed and are as follows:

Prior to August 1, 1978, Petitioner was a lawyer in good standing of the Bar of Texas, having qualified and having paid her regular annual dues, all pursuant to the Texas State Bar Act, Art. 320a-1 Texas Civil Statutes, and the State Bar Rules proposed and passed by the Supreme Court of the State of Texas acting as the Legislatively named Administrative and/or Regulatory Head of the Statewide Profession of the Practice of Law, a profession affected with a public interest (cf 7 Tex. Jur. (2) Rev. Part 1, pg. 37, ATTY §6, and cases cited).

On May 1, 1978, pursuant to a recommendation of the Board of Directors of the State Bar, the Supreme Court conducted a referendum amongst the members of the Bar with reference to a "one-time fee assessment" of $138.00 for the purpose of paying an indebtedness for the construction of the Bar Building (Texas Law Center). After the referendum carried, the Supreme Court issued its administrative order of May 3, 1978, that the one

time fee assessment for such purpose "be paid" to the clerk (APPENDIX D).

For the purpose of this statement, it is important to note that NO RULE OF SANCTION (for failure to pay the assessment) was proposed by the referendum, was voted on by the members, nor was passed or ordered (at that time) by the Supreme Court.

On or about June 1, 1978, Petitioner received a "bill" from the Clerk of the Supreme Court for her "Regular Dues Only" (and section dues, not applicable here) of $65.00 (APPENDIX E), which she promptly paid. On or about the same date, she received another "bill" for the $138.00 which expressly stated that the $138.00 "assessment is in addition to the regular annual fee" (emphasis added - see APPENDIX F). Petitioner did not pay this.

On or about August 1, 1978, Petitioner received a notice from the Clerk of the Supreme Court that she had not paid the one-time fee assessment for the Bar Building, and that if she did not,

"...the Clerk of the Supreme Court is required to strike from the records of the State Bar..."

her name (if thirty days delinquent). In this notice, the authority was cited as Art. IV, Sec. 5 of the State Bar Rules. This notice is APPENDIX G and Sec. 5 of Art. IV of the State Bar Rules can be found in APPENDIX C; more of that later.

On August 10, 1978, pursuant to Sec. 18 of Art. 6252-13a Texas Civil Statutes (otherwise The Texas Administrative Procedure and Texas Register Act, herein called the APA), Petitioner requested a hearing before the Supreme Court in its capacity as Administrative and/or Regulatory Head of the Statewide Profession of the Practice of Law (APPENDIX H).

On August 23, 1978, the Supreme Court ruled administratively that it was not subject to the APA since it was "a Court", noting, however, that in its capacity of regulating the "practice of Law", it was not involved with any decisional action of any case or controversy (APPENDIX I).

Petitioner, on August 24, 1978,

requested a rehearing (APPENDIX J) to which the Supreme Court, on September 5, 1978, orally replied that nothing further would be done.

On September 15, 1978, Petitioner sued the Supreme Court in its capacity as Administrative and/or Regulatory Head of the Statewide Profession of the Practice of Law in the 53rd District Court of Travis County, Texas, Cause No. 280, 298 under Sec. 19 of the APA (APPENDIX T) claiming, among other things, that the RULE OF SANCTION imposed against Petitioner by the Supreme Court as Administrator denied her Constitutional Rights (APPENDIX K).

The Supreme Court, in their administrative role, filed a plea to the jurisdiction of the trial court, alleging, in effect, that since they were "a Court", they were not an "agency" under the APA, and therefore, the trial court had no jurisdiction in the matter.

On November 21, 1978, a hearing was had before the Hon. Pete Lowry, Presiding Judge, and during such hearing, Petitioner urged upon the Court that the Supreme

Court erred in attempting to impose a sanction upon Petitioner for the failure to pay the one-time fee assessment, and that such was a deprivation of her rights (APPENDIX L) (cf. p. 38 where the action of the Supreme Court was said to be "despotic"; and p. 43 where it was argued that the Supreme Court was, in effect, refusing to give a hearing). Judge Lowry granted the plea to the jurisdiction and dismissed the case.

Appeal was taken to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, and after granting a motion to advance, the Court heard the matter on February 7, 1979, and affirmed the Trial Court on February 21, 1979, with a Motion for Rehearing being overruled on February 28, 1979.

Petitioner filed her APPLICATION FOR WRIT OF ERROR on March 5, 1979 with the Supreme Court.

> (Actually, per Texas practice, the Application is filed with the Clerk of the Court of Civil Appeals and thereafter, the whole record is transferred to the Clerk of the Supreme Court. Petitioner filed her Application

> with the Clerk of the Court of Civil Appeals on February 28, 1979, but the case was not transferred over until March 5, 1979.)

On March 5, 1979, Petitioner filed her MOTION TO DISQUALIFY OR ALTERNATIVELY SUGGESTION OF RECUSAL with the Supreme Court. Basically, it pointed out that since the members of the Court had acted in the case administratively (APPENDIX I), it would be questionable if the same members, switching hats, were to sit as an Appellate Court to decide the very same question they had decided Administratively. It was said:

> "In short, this Body is fatefully put in the spot of ruling judicially upon their own administrative ruling."

Attention was drawn to the fact that the "duty-to-sit" doctrine was the norm in Texas, but that the Supreme Court of the United States had expanded the "duty-to-sit" doctrine in the MURCHISON case; and in any event, recusal was certainly appropriate in view of the suspicion of bias and appearance of impropriety in the Supreme Court ruling on one of its administrative actions.

On May 30, 1979, the Supreme Court of Texas overruled the Motion to Disqualify and refused the Application for Writ of Error (APPENDIX P). With a minor correction, on June 27, 1979, the Supreme Court overruled Petitioner's Motion for Rehearing.

Question ONE presented here was set out and argued as noted above in the Trial Court. It was presented to the Court of Civil Appeals for the Third Supreme Judicial District in APPELLANT'S BRIEF at p. 15, et seq.

Both Question ONE and Question TWO presented here were set out and argued in Petitioner's APPLICATION FOR WRIT OF ERROR in the Supreme Court of Texas, and her MOTION TO DISQUALIFY OR ALTERNATIVELY, SUGGESTION OF RECUSAL in the same Court, as well as her REPLY TO THE AMICI,

> (There having been six Amici inclusive of four large prominent firms, three law professors, and the State Bar Association, against Petitioner, in addition to the Attorney General who represented the Respondents.)

as well as in her MOTION FOR REHEARING

and a supplemental letter calling the Supreme Court's attention to further matters under date of June 15, 1979.

V. (SC Rule 23(1) (g), Rule 19 (1)

A. In GOLDFARB vs VIRGINIA BAR, 471 US 773, 44 LE(2) 572, this court said:

> "We recognize that the States have a compelling interest in the practice of professions within their boundaries, and that as part of their power to protect the public health, safety, and other valid interests, they have broad power to establish standards for licensing practitioners and regulating the practice of professions... The interest of the States in regulating lawyers is especially great since lawyers are essential to the primary governmental function of administering justice, and have historically been 'officers of the courts'."

Texas, in furtherance of this notion, devised a Legislative Scheme for the regulation of the Statewide Profession of Law which they set out in Title 14 of the Texas Civil Statutes (herein TCS). In 1939, the State Bar Act was passed (Art. 320a-1 TCS) deleting some of the Articles

in Title 14 and, among other things, it, with PLAIN MEANING, gave administrative and/or regulatory leadership to "the Supreme Court of Texas" (Sec. 3 of the Act).

> (Texas is an avowed follower of the Plain Meaning doctrine of statutory interpretation; see Ex. Parte Roloff, 510 SW(2) 913 - Sup. Ct. 1974, where it is said that if the meaning is plain, the use of interpretative or construction aids would be "improper".)

B. Art. 320a-1, Sec. 4b TCS (APPENDIX B) provides for the establishment of annual fees "for the purpose of administration of this Act".

C. Art. 320a-1, Sec. 4c TCS (APPENDIX B) provides for "any fee".

D. Art. 320a-1, Sec. 4c TCS (APPENDIX B) provides for the Supreme Court's rule-making power in this area.

> (Other areas, such as the determination of moral fitness, study attainment, disciplining, unauthorized practice, etc., are set out elsewhere.)

E. In 1940, the Supreme Court - pursuant to its rule-making power as set out above

- adopted the Rules Governing the State Bar of Texas, which are set out in full beginning at page 239 of Vol. 1A of Vernon's Civil Statutes of the State of Texas Annotated. It should be noted that the order of the Supreme Court of February 22, 1940, said that the Rules were to be submitted to the Bar for a vote. They were, and after passage, they became the Rules of the Bar and have been from time to time amended (particularly by an increase of the annual fee!).

F. Part of the Rules consisted of Article IV, Section 4, which provided for an "annual membership fee" (APPENDIX C), and Article IV, Section 5, which provided a sanction for the failure to pay "the fee" - which sanction was cessation of Bar membership for failure to pay "such fee". To be reinstated, one had to pay the "fees due at the time he ceased to be a member", and also "fees for the current year, and fees for "any intervening fiscal years during which he had practiced law in" Texas.

G. Nowhere in the Legislative Scheme, nor in any Rule made by the Supreme

Court pursuant to Art. 320a-1, Sec. 4a TCS, does the Court have the power to promulgate a RULE OF SANCTION for failure to pay "any fee" other than the "annual membership fee".

H. Conceivably the Supreme Court could have passed such a RULE OF SANCTION under Art. 320a-1, Sec. 4A - BUT, to do so they would have had to submit a proposed RULE OF SANCTION to the Bar. BUT, whether or not they could have done so remains conjectural:

THEY DID NOT DO SO.

I. So the Supreme Court had no power to pass, much less impose, a RULE OF SANCTION for the failure to pay the $138.00 Bar Building debt per their Order of May 3, 1979 (APPENDIX D) on Petitioner.

J. HOWEVER, on August 1, 1978, they - having already (apparently) clandestinely enacted such a RULE OF SANCTION - imposed the same on Petitioner (APPENDIX G). Again on November 17, 1978, they imposed such a RULE OF SANCTION (APPENDIX N); and yet even while this case was pending before them, they once more imposed such a RULE OF SANCTION (APPENDIX Q).

K. The Supreme Court never proposed any RULE OF SANCTION for the failure to pay. It never held any hearings upon any such RULE OF SANCTION, nor did it submit any such RULE OF SANCTION to the members of the Bar. It simply adopted one and imposed it on Petitioner; yet when Petitioner requested a hearing upon such RULE OF SANCTION (APPENDIX H), it was denied (APPENDIX I), and when re-requested (APPENDIX J) nothing came forth. The RULE OF SANCTION was then summarily imposed.

L. Nothing in the Legislative Scheme for the control of the Profession of Law gives appellate rights to members of the Bar. Yet Texas is committed to the proposition that where vested property rights or fundamental rights are involved, "appeal" is an inherent right, and without it one is denied "due process"; see Texas Dept. of Human Resources v Silver Threads, 569 SW (2) 49, Austin CCA, 1978, nre; Thompson v Texas State Bd. of Medical Exams., 570 SW(2) 123, Tyler CCA, 1978, nre.

M. If Petitioner would have had a right of vote - or a right to protest in some fashion the RULE OF SANCTION, then matters might be different, but once more this fades into conjecture. She was not given that right, and none was open to her except the one she took.

N. In Texas, the Constitution, Art. II, Sec. I (APPENDIX M) makes the tri-partite form of government absolute. So have the Courts. Like MUSKRAT 55 LE 246, the Texas Supreme Court cannot, under this Article and Section of the Constitution, have any powers not strictly judicial in character. Texas Courts cannot be given anything but what the Constitution gives them or statutes pursuant to the Constitution give them; Ex Parte Hughes 129 SW (2) 270, Sup. Ct. The Supreme Court can and has been delegated rule-making power, but that by a Constitutional provision (Art. V, Sec. 25, Constitution; cf. Art. 1731 TCS); but even though delegated such power, they cannot go past a Legislative Rule of Civil Procedure; Lew v Charter Oak, 463 SW(2) 424, Sup. Ct. 1971. The Courts

can't be delegated rate-making power; Daniel, 92 SW(2) 372, Sup. Ct. 1936; Southwestern Bell, 526 SW(2) 526, Sup. Ct. 1975; nor can they be delegated power to give advisory opinion; Morrow 62 SW(2) 641; Shaddix 430 SW(2) 46; nor can they be given power to issue writs other than those provided for in the Constitution; Love 28 SW(2) 515; nor can executive functions be delegated to courts; Blackwell 500 SW(2) 97. NOR CAN THE ADMINISTRATION OF THE LOWER COURT'S DOCKET BE DELEGATED TO THE SUPREME COURT; see In re House Bill No. 537, 256 SW 573, Sup. Ct. 1923.

O. With such a restriction against improper delegation of power to the Supreme Court, Title 14 TCS can only be held constitutional under Texas Law if the delegation be to the MEMBERS of the Supreme Court, and not the Court as a Court.

P. When Courts in Texas act administratively, they do not act judicially. This is a proposition of long standing; see:

Jones v March 224 SW(2) 198, Sup. Ct. 1949;

State v Bush, 253 SW(2) 269, Sup. Ct. 1952;

Stone v LCB, 417 SW(2) 385, Supt. Ct. 1967; and

Davenport v State, 574 SW(2) 73, Ct. Crim. App. 1978.

Q. Accordingly, when the Supreme Court was given - and took - administrative and/or regulatory leadership of the Bar, it took not as a Court, but as nine persons who were not exempted from the APA.

(NOTE: Petitioner attempted to point out that a difference exists between judges and courts - that to be a judge is not necessarily to be a court. But the Court of Civil Appeals below held that a court, regardless of what capacity it acts in, is not subject to the APA. This is somewhat strange in the lights of the above Supreme Court (of Texas) holdings. Further it is even stranger in the light of the Texas CIVIL JUDICIAL COUNCIL, Art. 2328a TCS, on which the Chief Justice of the Supreme Court sits along with two justices of the Court of Civil Appeals level, and such COUNCIL is subject to the APA - and follows it; see Texas Register.)

R. By this reading, it was the only way

within the law in Texas that Petitioner could get prior due process. I.e., that she could challenge the RULE OF SANCTION for failure to pay the $138.00 Bar Building debt before she was suspended from the practice of law. This Court has made it abundantly clear that to gain a benefit, procedural due process must be given by Administrative Systems; Willner v New York, 373 US 96, 10 LE(2) 224, 83 SC 1175; Schware v New Mexico, 353 US 232, 1 LE(2) 796, 77 SC 752; and it has made it likewise abundantly clear that one must be given prior procedural due process before taking away a benefit; Goldberg v Kelly, 397 US 254, 25 LE(2) 287, 90 SC 1011.

S. Petitioner was denied this manner or method of obtaining prior due process, and she was - without a hearing of any remote kind - suspended from the practice of law in Texas.

T. This denial occurred when Petitioner sought the relief she should have been granted. She appealed and was denied access to the Courts, and this was appealed - but where? Directly to the

same body that had ruled she had no right to prior due process. MURCHISON makes it clear that the duty-to-sit rule pertaining to disqualification of judges is no longer the guide line; one doesn't simply look to Constitutional or Statutory inhibitors as the Supreme Court of Texas did in its opinion in the case at bar (APPENDIX P). To sit, as they did in this case, is clearly so susceptible to a suspicion of bias, it is so clearly questionable as to the appearance of impropriety, that to permit the Court to rule on its own Administrative Order is to deny Petitioner due process.

VI. THE QUESTIONS

The Questions in this case are of paramount importance because any despotic rule is one which breeds hatred for the law and causes the impetus of rebellion. Texas has recently passed another Bar Act during the 66th Legislature (1979). This new Act has the same infirmity as the present Act, namely that the Supreme Court is the rule-maker and the final Court to which any laywer has to go for

relief from whatever the Supreme Court sets up as a rule. This Court should take this case and consider it for this reason, if for no other.

VII. PRAYER

ACCORDINGLY, Petitioner respectfully requests that this Court grant the Application for Writ of Certiorari and in its final decision, render justice.

RELIEF IS RESPECTFULLY PRAYED.

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812 San Antonio
Austin, TX 78701
512 477-4210

ATTORNEY FOR PETITIONER

APPENDIX

APPENDIX A

United States Code

28 § 1257 JURISDICTION AND VENUE

§ 1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

APPENDIX B

Art. 320a-1 Tex. Civ. Statutes

Rules and regulations; fees

Sec. 4. Subdivision (a). From time to time as to the Court may seem proper, the Supreme Court of Texas shall prepare and propose rules and regulations for disciplining, suspending, and disbarring attorneys at law; for the operation, maintenance, and conduct of the State Bar; and prescribing a code of ethics governing the professional conduct of attorneys at law. When the Court has prepared and proposed such rules and regulations, it shall submit by mail a copy of each such rule and regulation, as well as all such other rules and regulations as may have been proposed and filed with the Court, supported by petition signed by at least ten per cent (10%) of the registered members of the State Bar, in ballot form to each registered member of the State Bar for a vote thereon. At the end of thirty (30) days from the time such ballots are mailed, the Court shall count the ballots that have been returned, provided that no election shall be valid unless a minimum of fifty-one per cent (51%) of the members registered shall have voted at the election at which such rule or rules are adopted; and each and all of such rules and regulations that have received a majority of the votes cast shall be by said Court declared and adopted and shall be promulgated by said Court and shall become immediately effective. Such vote shall be open to inspection by any member of the Bar. No rule or regulation shall be promulgated that has not received a majority of votes cast in the manner above-provided. Nothing herein shall be construed as authorizing the Court to prescribe fees to be charged for legal services rendered by any attorney.

Subdivision (b). The Supreme Court is further empowered and it shall be its duty to prescribe fees of not less than Four Dollars ($4) per annum per person for members of the State Bar to be paid to the Clerk of the Supreme Court to be held by him and expended by the Court or under its direction for the purpose of the administration of this Act. Any person licensed and registered may pay to the Clerk of the Supreme Court a sum of money from which the fees owed by such person may be taken from time to time as they become due.

Subdivision (c). The Supreme Court, prior to prescribing any fee to be assessed on members of the State Bar in excess of Four Dollars ($4) per annum, shall and must submit to the registered members of the State Bar, in ballot form, the question of whether such proposed fee assessment in excess of Four Dollars ($4) per annum shall be so prescribed. Ballots shall be mailed to the registered members of the State Bar and at the end of thirty (30) days from the time the last of said ballots are mailed by the Court, the Court shall count the ballots that have been returned to the Court; provided that no election shall be valid unless a minimum of fifty-one per cent (51%) of the registered members of the State Bar shall have voted at the election held for such purpose, and further provided, that a majority of those members so voting shall have approved said proposed fee. Such vote shall be open to inspection by any member of the State Bar and such ballots shall not be destroyed until the expiration of twelve (12) months after the results of such election have been declared.

APPENDIX C

TEXAS STATE BAR RULES

Art. IV

Section 4. **Membership Fee**

The annual membership fee prescribed by the Supreme Court shall be due and payable by each member to the Clerk of the Supreme Court June 1 of each fiscal year. However, any person becoming a member before the first day of December shall pay on admission the full membership fee for that fiscal year, but if such person becomes a member after December 1, he shall pay on admission one-half of the annual membership fee. It shall be the duty of the Clerk to issue to each member so paying such fee a membership card. It shall be the duty of the Clerk to keep all books, and other records proper and necessary to carry out the provisions of this section.

Section 5. **Suspension for Non-payment of Fees**

A member in default of payment of the fee for sixty days after it is due shall be regarded as delinquent and shall be given written notice thereof by the Clerk of the Supreme Court. If the delinquent member fails to pay such fee within thirty days thereafter, he shall cease to be a member, but shall be reinstated upon payment of the fees due at the time he ceased to be a member, together with fees for the current year and for any intervening fiscal years during which he has practiced law in the State of Texas. If at the end of ninety days after June 1, a member has not paid to the Clerk membership dues for the current year, the Clerk shall strike from the rolls of the State Bar the name of the delinquent member.

Any County or District Judge, or any Judge of any Appellate Court of this State, shall have the right, and it shall be his duty to refuse any person the privilege of practicing in such court, unless such person is currently a member of the State Bar of Texas in good standing. Any lawyer in this State whose name has been stricken from the rolls of the State Bar for non-payment of dues, and who has not been reinstated, shall not be permitted to practice law in this State, and if such lawyer does engage in the practice of law, such continued practice of law by such delinquent member shall constitute the unauthorized practice of law on the part of such person, and he may be enjoined by any court of competent jurisdiction.

APPENDIX D

IN THE SUPREME COURT OF

THE STATE OF TEXAS

ORDER OF THE COURT

WHEREAS, the Board of Directors of the State Bar of Texas, on January 27, 1978, in Austin, Texas, in a regular meeting, voted to recommend and request that the Supreme Court of Texas order a referendum of the membership of the State Bar of Texas on the question, to wit:

"Whether the Court shall order a one-time fee assessment of all of the members of the State Bar of Texas under the age of seventy (70) years on June 1, 1978, for the sole purpose of reducing any indebtedness created by the construction of the Texas Law Center, with payment as follows:

Members licensed on or after June 1, 1975, payment in three $32.00 annual payments.

Members who are nonresident and licensed before June 1, 1975, payment in three $36.00 annual payments.

Resident members who have been licensed to practice prior to June 1, 1975, and who are under 70 years of age, three $46.00 annual payments, provided that no further payment shall be due from any member after he or she reaches 70 years of age.

Provided that the receipts shall be pledged toward payment of such indebtedness, and each member may pay any or all of such payment in advance if and when desired, but with the first payment due by June 1, 1978.

Provided further that all rental income earned by the Texas Law Center as well as any surplus or excess remaining in the budget of the State Bar at the end of each fiscal year shall be used for the retirement of any indebtedness created by the construction of the Texas Law Center."

And WHEREAS, in accordance with the Texas Revised Civil Statutes, Annotated, Article 320a-1, Section 4, Subdivisions (b) and (c), and Article IV, Section 4, the Rules Governing the State Bar of Texas, the Court ordered a referendum of the membership of the State Bar on the question, and whereas the Clerk of this Court on May 1, 1978, certified the results of the balloting as follows:

	FOR	AGAINST
One-Time Fee Assessment	12,696(59%)	8,696(41%)

It appearing to the Court that at least 21,382 members returned their ballots which is in excess of 51% of the membership;

IT IS, THEREFORE, ORDERED by the Court that the one-time fee assessment of all the members of the State Bar of Texas under the age of 70 years on June 1, 1978, for the sole purpose of reducing any indebtedness created by the construction of the Texas Law Center be paid to the Clerk of the Supreme Court as follows:

Members licensed on or after June 1, 1975, payment in three $32.00 annual payments.

Members who are nonresident and licensed before June 1, 1975, payment in three $36.00 annual payments.

Resident members who have been licensed to practice prior to June 1, 1975, and who are under 70 years of age, three $46.00 annual payments, provided that no further payment shall be due from any member after he or she reaches 70 years of age.

APPENDIX D (cont'd)

Provided that the receipts shall be pledged toward payment of such indebtedness, and each member may pay any and all of such payment in advance if and when desired, but with the first payment due by June 1, 1978.

Provided further that all rental income earned by the Texas Law Center as well as any surplus or excess remaining in the budget of the State Bar at the end of each fiscal year shall be used for the retirement of any indebtedness created by the construction of the Texas Law Center.

By the Court en banc, in chambers, this the 3rd day of May, 1978.

/s/ Joe R. Greenhill
Chief Justice

APPENDIX E

Bar Bill Regular Annual
Fee June 1st, 1978

STATE BAR OF TEXAS
DUES STATEMENT
JUNE 1, 1978 - MAY 31, 1979

03675500
MILA KATHLEEN CAMERON
STEWART TITLE BG
9TH & SAN ANTONIO
AUSTIN TX 78701

—REGULAR DUES ONLY— CRM CON FAM GP

NOTE ANY ADDRESS CHANGE ABOVE

DUES SCHEDULE AND MEMBER'S STATUS

Lawyers licensed in Texas or elsewhere ON or AFTER June 1, 1975.....$25.00
Non-Resident members licensed in Texas or elsewhere BEFORE June 1, 1975 and not practicing in Texas during year ending May 31, 1979 .....$32.50
Lawyers licensed in Texas or elsewhere BEFORE June 1, 1975 and under 70 years of age $65.00
Lawyers licensed in Texas or elsewhere 70 years of age or over ON or BEFORE June 1, 1978 .....Exempt
Any resident or non-resident attorney under 70 years of age who decides to become inactive during the June 1, 1978, to May 31, 1979, fiscal period, will please check this box and return this statement along with the gold plastic bar card ☐

OUR RECORDS INDICATE YOUR 1978-79
MEMBERSHIP FEE WILL BE $65.00

MAKE CHECK PAYABLE TO
CLERK, SUPREME COURT OF TEXAS
FOR STATE BAR DUES

$65.00

APPENDIX F

(Irrelevant portions omitted - emphasis added)

June 1, 1978

STATE BAR OF TEXAS

Statement of Fee Assessment Passed
by Referendum of Membership

03675500
MILA KATHLEEN CAMERON
G-21 STEWART TITLE B
9TH & SAN ANTONIO
AUSTIN TX 78701

09
(seal)

Schedule of Payments Due

	Total Assessment
Members (resident and non resident) licnesed on or after June 1, 1975	$96.00
Non-resident members licensed prior to June 1, 1975	108.00
Resident members licensed prior to June 1, 1975	138.00

Members 70 years of age and older prior to June 1, 1978 are exempt. No further payment is due after a member reaches 70 years of age.

The total fee assessment may be paid in advance if desired or may be paid in installments as shown.

Please note that the assessment is in addition to the regular annual fee.

Make check payable to Clerk, Supreme Court of Texas.

APPENDIX G

(Irrelevant portions omitted - emphasis added)

THE SUPREME COURT OF TEXAS
P.O. BOX 12249
AUSTIN, TX 78711

AUGUST 1, 1978

03675500
MILA KATHLEEN CAMERON
G-12
812 SAN ANTONIO ST
AUSTIN TX 78701

DEAR LAWYER CAMERON

. . .

OUR RECORDS ALSO INDICATE THAT YOU HAVE NOT PAID THIS YEAR'S INSTALLMENT OF $46.00 ON THE ADDITIONAL DUES FROM THE FEE ASSESSMENT REFERENDUM.

YOU CAN ASSIST US IN CORRECTING ANY ERROR WHICH MAY HAVE BEEN MADE ON OUR PART. IF YOU HAVE NOT REMITTED THE AMOUNT DUE, THEN PLEASE DO SO IMMEDIATELY AS OUR RECORDS SHOW YOU ARE NOW DELINQUENT IN YOUR DUES. IF YOU FAIL TO DO SO THE CLERK OF THE SUPREME COURT IS REQUIRED TO STRIKE FROM THE RECORDS OF THE STATE BAR THE NAMES OF MEMBERS WHO BECOME 30 DAYS DELINQUENT IN THEIR DUES. (SEE RULES GOVERNING THE STATE BAR OF TEXAS ART. IV, SEC. 5.)

. . .

. . .

RESPECTFULLY

GARSON R. JACKSON, CLERK
SUPREME COURT OF TEXAS

APPENDIX H

J. P. Darrouzet
Counsellor at Law
Suite Number 610
812 San Antonio
Austin, Tx. 78701
512 / 477-4210

August 10, 1978

Hon. Joe R. Greenhill
Chief Justice
Supreme Court of Texas
P O Box 12248
Austin TX 78711

Hon. Zollie Steakley
Associate Justice
Supreme Court of Texas
P O Box 12248
Austin TX 78711

Hon. Jack Pope
Associate Justice
Supreme Court of Texas
P O Box 12248
Austin TX 78711

Hon. Sears McGee
Associate Justice
Supreme Court of Texas
P O Box 12248
Austin TX 78711

Hon. James G. Denton
Associate Justice
Supreme Court of Texas
P O Box 12248
Austin TX 78711

Hon. Price Daniel
Associate Justice
Supreme Court of Texas
P O Box 12248
Austin TX 78711

Hon. Sam D. Johnson
Associate Justice
Supreme Court of Texas
P O Box 12248
Austin TX 78711

Hon. Charles W. Barrow
Associate Justice
Supreme Court of Texas
P O Box 12248
Austin TX 78711

Hon. T. C. Chadick
Associate Justice
Supreme Court of Texas
P O Box 12248
Austin TX 78711

RE: MILA K. CAMERON
Attorney at Law
03675500

Gentlemen:

ONE: CLIENT

I am writing to you in behalf of Mila K. Cameron, a licensed attorney in the State of Texas and a resident of Austin, Travis County, Texas.

TWO: THE ORIGIN OF THE PROBLEM

The problem raised by, and the relief sought by, this letter arises by virtue of the letter which you - through your Clerk - forwarded to my client on August 1, 1978 (copy attached).

THREE: CAPACITY

I address this request for relief to you in your capacity as regulatory or administrative head of the Legislatively controlled profession of law; and not in your capacity as the Constitutionally created Supreme Court (qua court) of the State of Texas (i.e. not in your capacity as civil court of last resort).

FOUR: ANTICIPATORY REPLY

To avoid an anticipated reply to this Application, I call the Court's attention to the fact that this Court, qua court (of law), is a Constitutionally created court (Art. V, Sec. 1 et seq. Texas Constitution; enabled by statutes, Title 37 Texas Statutes, Art. 1715 et seq. TCS). You are also the Legislatively appointed regulatory head of the profession of law in the State of Texas.

FIVE: THE LEGISLATIVE SCHEME OF LICENSING

A. The Legislature undoubtedly may control the profession of law, as it controls other professions such as architects (Title 10A Texas Statutes), doctors (Title 71, Ch. 6, Texas Statutes), engineers (Title 51A, Texas Statutes), etc. It has done so by virtue of Title 14 Texas Statutes, Art. 304 et seq. TCS. It is clear from Art. 306 TCS and more particularly, Art. 320a-1, Sec. 3 TCS, that your

body is the regulatory or administrative head of the "admission-to" and "remaining-in" the profession of law, including the original licensing of and subsequent re-licensing of qualified applicants to the profession of law.

B. By Art. 320a-1, Sec. 4(a) TCS, your body is the regulatory or administrative head of the maintenance of the State Bar and by Art. 320a-1, Sec. 4(b,c) TCS, your body is the regulatory or administrative head of prescribing annual fees, or in the words of the statutes, "fees...per annum per person for members of the State Bar". You may also submit to referendum the fees to be assessed "per annum".

C. The implication of the State Bar Act is clear; should such annual fees not be paid, no re-licensing may occur. Further, no one may practice law in the State of Texas unless they be licensed pursuant to your regulatory and/or administrative rules (Art. 320a-1, Sec. 3 TCS).

D. Pursuant to your rule-making power with which you have been Legislatively endowed, you adopted the RULES GOVERNING THE STATE BAR OF TEXAS (herein called RULES), divided into XIII Articles; Art. IV of which deals with "Registration and Dues" (emphasis added). Art. IV, Sec. 4 and 5 RULES, then deal with "the annual membership fee..." and the suspension of a member for the non-payment of that fee.

E. Thus, by virtue of the Legislative statutory scheme placed in your hands as regulatory or administrative curator, the licensing of attorneys is made to hinge upon an annual fee, Art. 320a-1, Sec. 4(b,c) TCS, which per your administrative powers, you have implemented by Art. IV, Sec. 4 and 5, RULES.

SIX: THE REFERENDUM

Prior to May 1, 1978, you ordered a referendum on the question of whether a "one-time fee assessment" of all members of the Bar (except those over 70 years of age) should obtain, and on May 1, 1978, your Clerk certified the results, reflecting an excess of 51% membership voting with 12,000+ FOR and 8,000+ AGAINST.

SEVEN: YOUR ORDER

A. On May 3, 1978, you ordered a one-time fee assessment of all members under 70 years of age (copy attached).

B. By virtue of the order you entered in your regulatory and administrative capacity, you purported to act under Art. 320a-1, Sec. 4(b,c) TCS, and under Art. IV, Sec. 4 of the RULES.

EIGHT: NO CHANGE IN ANNUAL FEE

In your bill forwarded to the membership pursuant to the above referendum, you made it clear that this one-time fee assessment was "in addition to the regular annual fees", and not a change of the "annual fee". Your bill was included with the reminder, or bill, for the "annual fee" (both copies attached).

NINE: JEOPARDY

In the letter you sent my client, you have further made it clear that failure to pay the one-time fee assessment would make my client delinquent and subject to being stricken from the record of the State

Bar pursuant to Art. IV, Sec. 5, RULES, by virtue of which my client would thus not be permitted to practice law in this State.

TEN: CONTENTION

Pursuant to Art. 6252-13a, TCS, it is our contention that the threatened application of the RULES by you in your regulatory or administrative capacity constitutes an interference with or impairment of, and/or threatens to interfere with or impair, the legal rights and/or privileges of my client in that she will be wrongfully, illegally, and unconstitutionally denied the right to follow or pursue her chosen profession, to which she has been admitted under the appropriate lawful, Legislative scheme of control of such profession.

It is our contention that:

A. The debt or obligation for which the one-time fee assessment is being sought for the purpose of repayment was unlawfully and unconstitutionally created in violation of Art. II and Art. III of the Texas Constitution.

B. That this body in its threatened action to "de-license" my client for failing to pay the "one-time fee assessment" (even though my client has paid her "annual fee") for the purpose of paying for a public building, has effectively created a "class" of citizen (or person) of Texas for which no rational basis can be found, in denial of her State and Federal right to equal protection under the laws.

C. That the debt created by the State Bar of Texas for which the "one-time fee assessment"

is sought for payment was created in violation of the laws, rules and regulations of the profession of law in that it made my client (among others) liable for a debt in excess of the amount of money in the treasury of the State Bar in violation of Art. VI, Sec. 5 RULES; and further, it was a debt created that could not be paid from receipts for the current year without approval by referendum in violation of Art. X, Sec. 3 RULES.

D. The said debt was created by the Directors of the State Bar without lawful delegation of power to do so by your body as the Legislatively appointed regulatory and/or administrative head of the profession of law, in that no right of delegation is given your body to sub-delegate to said Directors the right to make such a debt or create such an obligation.

E. The debt or obligation for which the "one-time fee assessment" is being sought for the purpose of repayment was created on behalf of the State Bar Association by a misrepresentation.

F. The license of my client depends on the payment of an annual fee only, which she has paid (copies attached), and having done so, her license may not be statutorily denied.

G. The administrative control of the profession of law, or the administrative body controlling the profession of law in Texas, has admitted that the one-time fee assessment is not an annual fee.

H. That refusing or withholding or threatening to remove my client's license based upon the

interpretation of the statutes and rules as the threatening letter attached hereto indicates, is tantamount to a denial of property rights without due process of law; AND

I. That the threatened application of the sanction of non-renewal of a license is a denial of my client's rights to pursue her life, liberty and happiness as constitutionally guaranteed her by the United States Constitution.

ELEVEN: PRAYER

ACCORDINGLY, my client requests the Supreme Court in the capacity it has been herein addressed, to promptly have a hearing upon this matter in its regulatory or administrative capacity, and make a determination concerning whether or not the license of my client will or will not be renewed, depending on the payment or non-payment of the one-time fee assessment heretofore referred to; all under the provisions of Art. 6252-13(a), Sec. 18, TCS.

TWELVE: THIS "FILING"

A. This letter is filed with your body in its administrative capacity since no statute, rule or regulation exists as to procedure for administrative actions by this body; and since the duties of the Clerk of the Supreme Court as set down in Art. V, Sec. 3 of the Texas Constitution, and Title 37 of the Texas Statutes, Art. 1718 through 1725 TCS, nor Rule 474 through 522 TRCvP, provide for the Clerk to act as recipient of regulatory or administrative matters for the Supreme Court.

B. It would seem appropriate to "file" (if that be the correct term) - this matter with each

of the members of the Supreme Court, which is herewith being done.

THIRTEEN: ANOTHER ANTICIPATORY REPLY

A. It has been suggested that your body acting in an administrative capacity does not come within Art. 6252-13(a) TCS. The main reason set forth for this is that "the courts" are exempt from the definition of the "Agency" in Sec. 3 of the Act (herein called APA).

B. Initially please note that the Legislative control of the profession of law is not excepted from the APA in Sec. 21, nor is the Supreme Court exempt from the APA when it acts other than as a "court".

(Of course, in "administering" its own docket, the Supreme Court acts as a "court".)

C. Please further note that determining the fees and/or licensing under the Legislative statutory scheme of the control of the profession of law, your body does not even act in a quasi-judicial capacity, but in a purely ministerial role.

D. The plain meaning rule of statutory interpretation in Texas was neither abrogated by Art. 10 TCS nor by Art. 5429b-2 TCS; contrariwise, those two statutes governing statutory interpretation re-affirmed the plain meaning rule.

E. If this is true, then we find the plain meaning of "court" is:

"A body in the government to which the administrative justice is delegated; a body organized to administer justice and includes both judge and jury."

See Houston Belt vs Lynch, 221 SW 959.

F. All one has to do is read Art. V of the Texas Constitution and Titles 37 to 45 of the Texas Statutes to understand what the plain meaning of "court" or "courts" means in Texas, or elsewhere for that matter.

G. And it is no answer to say that because a court, qua "body of men", is given administrative stewardship over a given profession that it remains a purveyor of justice in the same sense as when it acts as a Court, qua court.

H. That you are an integrated body of men with a capacity for wearing two hats seems beyond argument.

I. You fit into the Constitutional scheme of the Judicial Branch of government as a Court; this does not prevent you from acting quasi-executive or quasi-legislative or even "quasi-judicially" as a regulator or an administrator in a Legislative scheme of controlling a profession.

(NOTE: The Legislature could have had you administer the profession of Medicine rather than the State Board of Medical

Examiners, just as they gave the oil and gas industry to the Railroad Commission.)

A HEARING FOR A DETERMINATION AND RELIEF IS RESPECTFULLY PRAYED.

ATTORNEY FOR APPLICANT

/s/

J. P. Darrouzet
Counsellor at Law
Suite No. G 10
812 San Antonio
Austin TX 78701
512 477 4210

JPD/ctm

APPENDIX I

(Seal and part of letterhead omitted)

THE ATTORNEY GENERAL OF TEXAS

August 23, 1978

Mr. J. P. Darrouzet
Counsellor at Law
Suite No. G 10
812 San Antonio
Austin TX 78701

Re: Mila K. Cameron

Dear Mr. Darrouzet:

The Supreme Court of Texas has instructed me to respond to your letter of August 10, 1978.

It is the position of the Court that its regulation of the practice of law while not involving the decision of a case or controversy nevertheless is a judicial function to which the Administrative Procedures and Texas Register Act (article 6252-13a, V.T.C.S.) does not apply.

No other actions will be taken in response to your letter.

Yours very truly,

(signature)

David M. Kendall

DMK:bm

APPENDIX J

J. P. Darrouzet
Counsellor at Law
Suite Number G10
812 San Antonio
Austin, Tx. 78701
512 / 477-4210

August 24, 1978

David M. Kendall
First Assistant Attorney General
Supreme Court Building
P O Box 12548
Austin TX 78711

Re: Mila K. Cameron

Dear Mr. Kendall;

I would like to take up two matters regarding your letter of August 23, 1978.

I.

The first matter is a possible persuading of the Supreme Court through you that they are wrong.

(NOTE: Absent any procedural rules, it is difficult to know how to make these arguments; so I am assuming that you are acting for the Supreme Court, both as their lawyer, and - I guess - what would be the equivalent of their Hearing Officer.)

The Supreme Court has made it rather clear - at least as to licensing - that when Courts are appointed in administrative capacities - they act administratively, not judicially. They made this absolutely clear in Jones v Marsh, 224 SW(2) 198; State v Bush, 253 SW(2) 269; and Stone v TLCB, 417 SW(2) 385.

It is quite clear from the statutes I cited to the Court that they act administratively in licensing matters.

Surely they are not now saying what is sauce for the goose is not sauce for the gander.

II.

I believe that I have the right to push the question of whether or not the Legislature designated the Supreme Court as an administrative body. I have begun the process with my letter to the Court of August 10, 1978.

All I have received in return is your letter of August 23, 1978.

Suppose that I desire to go to the District Court with this under the Appellate provision of Art. 6252-13a TCS.

Suppose that in my petition, I allege my application of 8/10/78, and state the Court's reply of 8/23/78, which hinges only on your letter (NOTE: Needless to say, I do not doubt the letter, its contents, its substance, your authority, or what the Court told you).

Suppose your successor in office - under Mark White or otherwise - comes in and says the Supreme Court never ruled; therefore, no appeal lies.

Suppose that I present your letter to the District Court and it says that it is not a letter from the Supreme Court of the State of Texas; it is not a ruling, administrative or judicial, by the Supreme Court, and that David M. Kendall is not a "hearing officer" of the Supreme Court; therefore, no appeal lies.

If the contents of your letter are correct, would it not be perhaps better for the Supreme Court to enter a judicial Order to the effect that my application of 8/10/78 cannot be filed for the reasons you have stated?

That I know your relationship might be one thing, but that a Court or Record may know it is something else.

Your prompt response would be appreciated.

Sincerely,

(signature)

J. P. Darrouzet

JPD/ctm

xc: Supreme Court Justices:
Hon. Joe R. Greenhill
Hon. Zollie Steakley
Hon. Jack Pope
Hon. Sears McGee
Hon. James G. Denton
Hon. Price Daniel
Hon. Sam D. Johnson
Hon. Charles W. Barrow
Hon. T. C. Chadick

xc: Mila K. Cameron

APPENDIX K

PLAINTIFF'S ORIGINAL PETITION
No. 280,298 in the 53rd District Court
of Travis County, Texas

SEVEN: THE THREAT

(a) PETITIONER says that when the RESPONDENTS forwarded her their letter of August 1, 1978, that the same constituted a ruling or decision of RESPONDENTS in the capacity in which they are before this Court (AND NOT IN THEIR JUDICIAL CAPACITY).

(b) PETITIONER says that such an action by RESPONDENTS constituted the threatened application of the RESPONDENTS' Order (or Rule) of May 3rd, 1978 (copy attached to letter to RESPONDENTS under date of August 10, 1978 - all of which is attached hereto as exhibits and pleadings) to PETITIONER, which would interfere or threaten to interfere with her legal right and/or privilege to practice law in Texas and thereby, seek to pursue her right to life, liberty and the pursuit of happiness which she has chosen and which she has fully complied with all conditions precedent to acquire (and which she had and still has).

All right, they say, "We are not going to do anything about it." So where does that leave us? We come to you and we say, "Okay, the A.P.A. is the only thing we have got to work with. Give us a hearing, that is all we are asking. We will appeal it, if you will give us a hearing." And you say to us, "Okay, we will accept your jurisdiction of the case and we will have a hearing and we will enjoin the Supreme Court from taking away their license unless she pays it." I am not saying it cannot be collected. It can be collected, but it can't be collected that way. That is the principal point of what we are making. We are not saying they can't collect a hundred and thirty-eight dollars from Mrs. Cameron. We are saying they can't do it by the threat of taking away her license. (emphasis added)

From Pgs. 36-37
of the Statement
of Facts; i.e.
the argument before
the Trial Court
in Cause No. 280,298;
53rd District Court
Travis County, Texas
made by the Attorney
for the Petitioner.

APPENDIX M

CONSTITUTION OF THE STATE OF TEXAS

ARTICLE II

THE POWERS OF GOVERNMENT

Sec.

1. Division of powers; three separate departments; exercise of power properly attached to other departments.

§ 1. Division of powers; three separate departments; exercise of power properly attached to other departments

Section 1. The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

APPENDIX N

(Seal and part of letterhead omitted for Appendix)

THE SUPREME COURT OF TEXAS

AUSTIN, TEXAS 78711

November 17, 1978

03675500
MILA KATHLEEN CAMERON
G-12
812 SAN ANTONIO ST
AUSTIN TX 78701

Dear Attorney:

Article 320a-1, Section 3, Texas Revised Civil Statutes Annotated, enacted by the Texas State Legislature in 1939, provides as follows:

> "All persons who are now or who shall hereafter be licensed to practice law in this State shall constitute and be members of the State Bar, and shall be subject to the provisions hereof and the rules adopted by the Supreme Court of Texas; and all persons not members of the State Bar are hereby prohibited from practicing law in this State...."

Pursuant to the above statute, Article IV, Section 5, of the Rules Governing the State Bar of Texas, as amended in 1957, provides:

> "A member in default of payment of the fee for sixty days after it is due shall be regarded as delinquent and shall be given written notice thereof by the Clerk of the Supreme Court. If the delinquent member fails to pay such fee within thirty days thereafter, he shall cease to be a member, but shall be reinstated upon payment of the fees due at the time he ceased

> to be a member,... If at the end of ninety days after June 1, a member has not paid to the Clerk membership dues for the current year, the Clerk shall strike from the rolls of the State Bar the name of the delinquent member."

Our records show that you have not paid the special membership fee. Accordingly, your name, pursuant to such statute and rule, stands among the number who are now stricken. You may want to qualify for reinstatement by forwarding your check, along with a copy of this letter, to this office in the enclosed envelope.

The enclosed copy of statement heretofore mailed to you dated June 1, 1978, shows the options which you have in the amount of payments.

This letter is written as a courtesy so that you may take whatever action is appropriate in your circumstance. If you do not desire reinstatement, please return to the Clerk's office your Bar membership card as provided on the reverse side of your card.

Very truly yours,

(signature)

Garson R. Jackson, Clerk

Encls.

Mila K. CAMERON, Appellant,

v.

Honorable Joe R. GREENHILL et al., Appellees.

No. 12977.

Court of Civil Appeals of Texas, Austin.

Feb. 21, 1979.

Rehearing Denied Feb. 28, 1979.

In an action against members of the State Supreme Court, plaintiff assumed to base district court jurisdiction upon the Administrative Procedure and Tax Register Act and contended her suit was an "appeal" under the Act. A plea to the jurisdiction was granted, and the case ordered dismissed, by the 53rd District Court, Travis County, Pete Lowry, P. J. Plaintiff appealed. The Court of Civil Appeals, Phillips, C. J., held that courts are entirely exempt from the Administrative Procedure Act, regardless of capacity in which they act.

Affirmed.

Administrative Law and Procedure ⇐4

Courts are entirely exempt from Administrative Procedure Act, regardless of capacity in which they act. Vernon's Ann. Civ.St. arts. 6252-13a, 6252-13a, §§ 3(1), 19.

J. P. Darrouzet, Austin, for appellant.

Mark White, Atty. Gen., Douglas B. Owen, Asst. Atty. Gen., Austin, for appellees.

PHILLIPS, Chief Justice.

Appellant filed an administrative appeal in the district court of Travis County. In her petition appellant named each of the nine members of the Supreme Court of Texas as defendants. Appellant sued the justices "in their capacity as the regulatory or administrative head of the Legislatively controlled profession of law," and attacked in her petition the validity of a Supreme Court order of May 3, 1978, which called for a one-time fee assessment of certain members of the State Bar of Texas. The district court's jurisdiction was alleged to exist solely under the Administrative Procedure and Texas Register Act, Tex.Rev.Civ.Stat. Ann. art. 6252-13a, § 19 (Supp.1978), and appellant contended her suit was an "appeal," under the Act.

Appellees filed, among other pleadings, a plea to the jurisdiction which, after hearing, the trial court granted and ordered the case dismissed.

Appellant's point of error, which we overrule, is the error of the court in refusing jurisdiction under art. 6252-13a.

The Administrative Procedure Act applies only to an "agency," as that term is defined in art. 6252-13a, § 3(1), which reads as follows:

> "'Agency' means any state board, commission, department, or officer having statewide jurisdiction, *other than* an agency wholly financed by federal funds, the legislature, *the courts*, the Industrial Accident Board, and institutions of higher education, that makes rules or determines contested cases." Tex.Rev.Civ. Stat.Ann. art. 6252-13a, § 3(1) (Supp. 1978). (Emphasis added).

In spite of the unqualified exemption of "the courts" from this Act, appellant, nonetheless, maintains that the Supreme Court, in ordering the questioned assessments, was acting in an administrative capacity, as distinguished from its judicial capacity, and is therefore subject to the Act.

We hold that the courts are entirely exempt from the Act, regardless of the capacity in which they act.

The judgment of the district court is in all things affirmed.

APPENDIX P

**MILA K. CAMERON vs.
HONORABLE JOE R. GREENHILL
ET AL.**

No. B-8286

Application for writ of error is refused with per curiam opinion. (Opinion of CCA, 577 S. W. 2d 389).

PER CURIAM

Petitioner, Mila K. Cameron, a licensed attorney, brought this suit against respondents, nine justices of the Supreme Court of Texas,[1] complaining of an order of the Supreme Court setting a special fee assessment against State Bar members. Petitioner challenged this action in the 53rd Judicial District Court of Travis County as not being in compliance with the Administrative Procedure and Texas Register Act, Article 6252-3a[2]. The district court sustained respondents' plea to the jurisdiction that the Act expressly exempts courts from its application and dismissed the cause. The court of civil appeals affirmed and the petitioner has timely filed her application for writ of error. 577 S. W. 2d 389.

In conjunction with her application for writ of error, Petitioner has filed a motion urging that the respondents are disqualified from determining the merits of her application or, in the alternative, each member of the Supreme Court should recuse himself from participation in the final determination of this matter. We hold that we are not disqualified and, therefore, have a duty to serve.

[1] Justices Price Daniel and T. C. Chadick have now retired and have been replaced by Justices Franklin S. Spears and Robert M. Campbell, but are still joined as defendants in their official capacity.

[2] All references are to Texas Revised Civil Statutes Annotated.

On January 27, 1978 the Board of Directors of the State Bar of Texas voted to recommend and request that the Supreme Court of Texas order a referendum of the membership of the State Bar on the question of a one-time fee assessment for the sole purpose of reducing any indebtedness on the Texas Law Center. The Supreme Court ordered such referendum in accordance with Article 320a-1, Section 4, and the results as certified by the Clerk of this Court show that more than 51% had voted as required by said Act and that the one-time fee assessment was favored by approximately 60% of those voting. The Supreme Court accordingly entered an order providing for this fee and statements were sent to the membership of the State Bar. Petitioner has not paid this fee assessment and by this suit challenges the Supreme Court's authority to order it paid.

Article V, Section 11, of the Texas Constitution provides in part that no judge shall sit in any case "wherein he may be interested . . . ." The legislature has implemented this provision by the enactment of Article 15. It is a settled principle of law that the interest which disqualifies a judge is that interest, however small, which rests upon a direct pecuniary or personal interest in the result of the case presented to the judge or court. *Sun Oil Company v. Whitaker*, 483 S. W. 2d 808, 823 (Tex. 1972); *Hidalgo County Water Improve. Dist. No. 2 v. Blalock*, 157 Tex. 206, 301 S. W. 2d 593 (1957).

Petitioner does not assert that any of the justices have a pecuniary or personal interest in the case and it is obvious that none does. In fact, the interest of respondent-justices is no greater than that of any other member of the State Bar of Texas or even of the public in general. In applying the rule of disqualification, we should endeavor to follow the spirit and intent of the Constitutional rule. The Constitution does not contemplate that judicial machinery shall stop. If this is threatened, the doctrine of necessity will permit the judge to serve. *Hidalgo County Water Con. & Imp. Dist. No. 1 v. Boysen*, 354 S. W. 2d 420, 423 (Tex. Civ. App.—San Antonio 1962, writ ref'd). Respondents are parties only because they are named as parties To hold that merely naming a judge as a party would disqualify him would put power in the hands of litigants to frustrate our judicial system.

Petitioner urges that *due process* requires our disqualification under the United States Constitution and the Texas Constitution. A similar contention has been rejected by other courts involving virtually identical situations. In *Buschbacher v. Supreme Court of Ohio*, No. C-2-75-743, 75-751, 76-309 (S. D. Ohio), a three judge district court denied a claim of disqualification of the Ohio Supreme Court justices to determine the constitutionality of Rule 7 of that court. That rule requires practicing attorneys to register and pay a biennial fee. The Supreme Court of the United States summarily affirmed the judgment of this three-judge district court. 430 U.S. 901 (1977). In *Ables v. Fones*, 587 F. 2d 850 (6th Cir. 1978), a similar claim of due process disqualification was rejected in a suit questioning the right of the Tennessee Supreme Court to hear challenges to its Rule 42 which provides for annual registration of attorneys to practice law in Tennessee.

The Supreme Court of the United States has unanimously rejected the broad claim that due process is violated by the combination of investigative and adjudicative functions in an administrative board. *Withrow v. Larkin*, 421 U.S. 35 (1975). In support of this holding the Court said:

"Judges repeatedly issue arrest warrants on the basis that there is probable cause to believe that a crime has been committed and that the person named in the warrant has committed it. Judges also preside at preliminary hearings where they must decide whether the evidence is sufficient to hold a defendant for trial. Neither of these pretrial involvements has been thought to raise any constitutional barrier against the judge's presiding over the criminal trial and, if the trial is without a jury, against making the necessary determination of guilt or innocence. Nor has it been thought that a judge is disqualified from presiding over injunction proceedings because he has initially assessed the facts in issuing or denying a temporary restraining order or a preliminary injunction. . . . We should also remember that it is not contrary to due process to allow judges and administrators who have had their initial decisions reversed on appeal to confront and decide the same questions a second time around.[3] . . .

. . . .

"The initial charge or determination of probable cause and the ultimate adjudication have different bases and purposes. The fact that the same agency makes them in tandem and that they relate to the same issues does not result in a procedural due process violation. . . ." *Id.* at 56-58.

See also: *Barger v. Brock*, 535 S. W. 2d 337, 338 (Tenn. 1976).

We conclude that it is not a due process violation for the justices of this Court who ordered the submission of a referendum of the fee assessment at the request of the State Bar directors to determine the legality of such assessment. The respondent-justices are, therefore, not disqualified from considering petitioner's application for writ of error. Since we are not disqualified, it is our constitutional duty to serve. *Sun Oil Company v. Whitaker, supra.*

Insofar as the merits of this case are concerned, the court of civil appeals has correctly determined that provisions of the Administrative Procedure Act do not apply to the acts of this Court under the express terms of Article 6252-13a, Section 3(1), which reads as follows:

"'Agency' means any state board, commission, department, or officer having statewide jurisdiction, *other* than an agency wholly financed by federal funds, the legislature, *the courts*, the Industrial Accident Board, and institutions of higher education, that makes rules or determines contested cases. (Emphasis added).

The application for writ of error is refused.

Opinion delivered May 30, 1979.

[3] There are other examples which can be added to this list, such as the determination of the validity or constitutionality of a rule of civil procedure and the consideration of motions for rehearing.

APPENDIX Q

(Seal and parts of letterhead omitted)

THE SUPREME COURT OF TEXAS
AUSTIN, TEXAS 78711

June 13, 1979

Ms. Mila Kathleen Cameron
Stewart Title Bldg.
812 San Antonio
Austin, Texas 78701

Dear Ms. Cameron:

Thank you for your $65.00 check sent to cover the 1979-80 regular membership fee of the State Bar of Texas.

In order to be reinstated as a member in good standing of the State Bar of Texas, your check in the amount of $92.00 is needed for the Special Membership Fees of 1978 and 1979; or, you may wish to pay the full amount of $138.00.

Please make your check payable to the Clerk of the Supreme Court of Texas and return in the enclosed envelope.

Thanking you for your cooperation, I am

Sincerely,

Garson R. Jackson, Clerk

By /s/ F. Baker
Secretary

Encl.

APPENDIX R

(Seal and parts of letterhead omitted)

THE SUPREME COURT OF TEXAS
AUSTIN, TEXAS 78711
June 27, 1979

Mr. J. P. Darrouzet, Attorney
Suite No. G 10
812 San Antonio
Austin, Texas 78701

Mr. Douglas Owen, Assistant Attorney General
P O Box 12548 Capitol Station
Austin, Texas 78711

West Publishing Company,
50 West Kellogg Blvd.,
Saint Paul, Minn. 55102

Dear Sirs:

This is to advise that the petitioner's motion for rehearing of application for writ of error in the case of MILA K. CAMERON vs. HONORABLE JOE R. GREENHILL ET AL., No. B-8286 was this day overruled.

Page two of the per curiam opinion delivered on May 30, 1979 has been corrected and we are enclosing this corrected page for substitution.

Very truly yours,

(signature)

Garson R. Jackson, Clerk

Incl.
Page 2 of per curiam opinion.

cc: Hon. John Phillips, Chief Justice,
Court of Civil Appeals
Austin, Texas 78711

APPENDIX S

(Seal, parts of letterhead and irrelevant parts omitted)

COURT OF CIVIL APPEALS

THIRD SUPREME JUDICIAL DISTRICT

June 29, 1979

Mr. John Dickson
District Clerk
Travis County Courthouse
Austin, Texas 78701

Re: D/C #280,298
CCA #12,977--Mila K. Cameron v. Honorable Joe R. Greenhill, et al.

Dear Mr. Dickson:

Enclosed is the Mandate in the above cause. Please file and execute in the usual manner. Thank you.

Very truly yours,

MRS. MARGIE LOVE, CLERK

By (signed)

Mrs. Susan Bage, Deputy

Enc.

APPENDIX T

Art. 6252-13a Tex. Civ. Stats. "The APA"

Art. 6252—13a. Administrative Procedure and Texas Register Act

Purpose

Section 1. It is declared the public policy of this state to afford minimum standards of uniform practice and procedure for state agencies, to provide for public participation in the rulemaking process, to provide adequate and proper public notice of proposed agency rules and agency actions through publication of a state register, and to restate the law of judicial review of agency action.

Definitions

Sec. 3. As used in this Act:

(1) "Agency" means any state board, commission, department, or officer having statewide jurisdiction, other than an agency wholly financed by federal funds, the legislature, the courts, the Industrial Accident Board, and institutions of higher education, that makes rules or determines contested cases.

(2) "Contested case" means a proceeding, including but not restricted to ratemaking and licensing, in which the legal rights, duties, or privileges of a party are to be determined by an agency after an opportunity for adjudicative hearing.

Declaratory judgment on validity or applicability of rules

Sec. 12. The validity or applicability of any rule, including an emergency rule adopted under Section 5(d) of this Act, may be determined in an action for declaratory judgment in a district court of Travis County, and not elsewhere, if it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff.

Judicial review of contested cases

Sec. 19. (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this Act. This section is cumulative of other means of redress provided by statute.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1978

NO. 79-108

MILA K. CAMERON, Petitioner

VS

HON. JOE R. GREENHILL, ET AL,
Respondents

SUPPLEMENT

(SC Rule 24[5])

J. P. DARROUZET
Counsellor at Law
Suite No. G-10
812 San Antonio
Austin TX 78701
512 477 4210

ATTORNEY FOR PETITIONER

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1978

MILA K. CAMERON,
Petitioner

VS

NO. 79-108

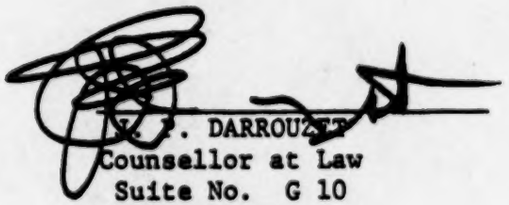
HON. JOE R. GREENHILL, ET AL,
Respondents

SUPPLEMENT

TO THE HONORABLE COURT:

The Court's attention is called to the case of BELLOTI vs BAIRD, ____US____, 61 LE(2) 797, 99 SC ____.

RESPECTFULLY SUBMITTED,



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ATTORNEY FOR PETITIONER

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

* * *

NO. 79-108

* * *

MILA K. CAMERON,

Petitioner,

V.

HONORABLE JOE R. GREENHILL, ET AL.,

Respondents.

* * *

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Texas

* * *

RESPONDENTS' BRIEF IN OPPOSITION

* * *

MARK WHITE
Attorney General of Texas

JOHN W. FAINTER, JR.
First Assistant

TED L. HARTLEY
Executive Assistant

DOUGLAS B. OWEN
Chief, State and County Affairs

P.O. Box 12548, Capitol Station
Austin, Texas 78711

Attorneys for Respondents

INDEX OF AUTHORITIES

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

* * *

NO. 79-108

* * *

MILA K. CAMERON,

Petitioner,

V.

HONORABLE JOE R. GREENHILL, ET AL.,

Respondents.

* * *

On Petition For A Writ Of Certiorari
To The Supreme Court Of The State Of Texas

* * *

RESPONDENTS' BRIEF IN OPPOSITION

* * *

TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

The Attorney General of Texas, on behalf of the Honorable Joe R. Greenhill, Chief Justice of the Supreme Court of Texas, and Zollie Steakley, Jack Pope, James Denton, Sears McGee, Sam Johnson, Charles Barrow, Robert Campbell and Franklin Spears, all Associate Justices of the Supreme Court of Texas, respectfully requests that the Court deny the petition for writ of certiorari.

OPINIONS BELOW

The opinion of the Texas Court of Civil Appeals is

Cameron v. Greenhill, 577 S.W.2d 389 (Tex.Civ.App. - Austin 1979), reproduced as Appendix O to the petition for writ of certiorari. The *per curiam* opinion of the Supreme Court of Texas is *Cameron v. Greenhill*, 22 Tex.Sup.Ct.J. 385 (June 2, 1979), reproduced as Appendix P to the petition for writ of certiorari.

JURISDICTION

The Court has no jurisdiction under 28 U.S.C. §1257 for the reasons stated *infra*.

STATUTE INVOLVED

The only statute involved in this case is Article 6252-13a §3(1), Texas Revised Civil Statutes, commonly known as the Administrative Procedure and Texas Register Act. The pertinent portion of the statute reads as follows:

> 'Agency' means any state board, commission, department, or officer having statewide jurisdiction, other than an agency wholly financed by federal funds, the legislature, the courts, the Industrial Accident Board, and institutions of higher education, that makes rules or determines contested cases.

TEX.REV.CIV.STAT.ANN. art. 6252-13a, §3(1) (Supp. 1978) [hereinafter the Texas APA].

QUESTIONS PRESENTED

1. Respondents believe the basic issue presented in this action to be solely a question of state statutory construction which can be stated as follows:

Whether the Texas APA is applicable to decisions and rule making of the Texas state courts.

2. Whether the Texas Supreme Court's refusal to disqualify itself from considering the merits of the first question deprived Petitioner of due process.

STATEMENT OF THE CASE

Petitioner, an attorney licensed in Texas, brought this suit against Respondents, nine justices of the Supreme Court of Texas, complaining of an order of that court setting a special fee assessment against members of the State Bar of Texas. She brought this action in a Texas district court as an administrative "appeal" and alleged jurisdiction to exist solely under the provisions of the Texas APA. The Texas district court dismissed the case for lack of subject matter jurisdiction relying upon §3(1) of the Texas APA which is *unqualified* in its exclusion of "the courts" from the definition of an "agency" covered by the Texas APA.

On appeal, the Austin Court of Civil Appeals affirmed the narrow jurisdictional ruling of the district court in a one page opinion which held that the Texas courts are entirely exempt from the Texas APA. See, Appendix O, Petitioner's Brief. In a *per curiam* opinion, a unanimous Texas Supreme Court held that under both Texas law and the United States Constitution it was not disqualified from considering Petitioner's application for writ of error. On the merits, the Court then refused Petitioner's application thereby affirming the district court's dismissal for lack of jurisdiction. See, Appendix P, Petitioner's Brief.

REASONS WHY THE WRIT SHOULD BE DENIED

1. THE PRIMARY ISSUE IS SOLELY A QUESTION OF STATE LAW.

The state court decision focused solely on an issue of purely state concern, *viz.*, the construction of the meaning of the "courts" exception to the §3(1) definition of an "agency" covered by the Texas APA. The Texas courts did not construe the "Texas Legislative Scheme for the control of the Statewide Profession of the Practice of Law" (Petitioner's Brief, p. 3). Rather, they construed §3(1) of the Texas APA. Therefore, the Texas

court's decision can be sustained on an independent ground of state law. Since the "courts" exception is unqualified, it cannot be construed to allow justices of courts to be sued under the Texas APA depending upon the capacity in which they act. See, e.g., *Wilson v. State*, 582 S.W.2d 484 (Tex.Civ.App. -Beaumont 1979, no writ) [the Texas APA completely exempts the functions of local grievance committees of the State Bar Association.

2. PETITIONER HAS FAILED TO PROPERLY PRESENT HER CLAIMS IN STATE COURT; THEREFORE, HER CASE IS NOT RIPE FOR REVIEW BY THIS COURT.

The Texas courts cannot decide the merits of a federal question without first having subject matter jurisdiction. The only grounds for jurisdiction urged by Petitioner in the Texas courts was under the provisions of the Texas APA. There is clearly no jurisdiction under the Texas APA for Texas courts to hear Petitioner's claim. The only way the Texas court could have reached the merits of any federal question under the Texas APA, therefore, was through a constitutional challenge to the scope of the "courts" exception contained in the state statute. But the Petitioner never raised such a constitutional challenge to the Texas APA. In failing to do so, she precluded the Texas courts from addressing any federal issue. For Petitioner to prevail now, this Court would have to rule that §3(1) of the Texas APA violates Petitioner's procedural due process rights; that is an issue which the Texas courts were not given the opportunity to address. Therefore, the exercise of certiorari is not proper in this case.

3. THE DECISION BELOW PRESENTS NO CONFLICT WITH ANY DECISION OF THIS COURT OR OF ANY CIRCUIT COURT OF APPEALS.

The Texas Supreme Court held that under this

Court's summary affirmance of the three-judge district court decision in *Buschbacher v. Supreme Court of Ohio*, No. C-2-72-743, 75-751, 76-309 (S.D. Ohio 1976), *aff'd sub. nom., Cuyahoga County Bar Association v. Supreme Court of Ohio*, 430 U.S. 901 (1977), and *Withrow v. Larkin*, 421 U.S. 35 (1975), it is not a due process violation for the justices of the Texas Supreme Court, who ordered the submission of a referendum for the fee assessment of Texas attorneys at the request of the State Bar directors, to determine the legality of such fee assessment. See, Appendix P, Petitioner's Brief. The court in *Buschbacher* further held that the United States Constitution does not require a hearing *prior to* a state supreme court's promulgation or enforcement of a rule requiring attorneys to pay a fee assessment even if the rule does not specifically state that failure to pay the fee will automatically result in an attorney's suspension.[1] In summarily affirming the decision of the three-judge court, this Court has directly rejected all of Petitioner's contentions.

Petitioner alleges no conflict with any Circuit Court of Appeals decision. The only Circuit Court decision is in complete accord with the decision of the Texas court below. *Ables v. Fones*, 587 F.2d 850 (6th Cir. 1978).

While failing to discuss or even mention the controlling precedents in her petition, Petitioner offers

---

[1]The *Buschbacher* decision follows this Court's consistent line of cases which approve the broad power and traditional role of state supreme courts to regulate their state's legal profession. *Goldfarb v. Virginia State Bar Association*, 421 U.S. 773, 789, n. 18 (1975); *Lathrop v. Donohue*, 367 U.S. 820 (1961). The Texas Supreme Court has the inherent power and ultimate control over the regulation of the practice of law in Texas, including the power to require the periodic payment by Texas attorneys of reasonable and necessary expenses such as those being contested herein. See, *Eichelberger v. Eichelberger*, 582 S.W.2d 395, 398-399, n. 1 (Tex. 1979), and cases cited therein.

no new reason or authority which would imply that these decisions are ripe for reconsideration and possible overruling or change. Certainly there is no better disposition of *In re Murchison*, 349 U.S. 133 (1955), upon which Petitioner relies, than that given by Mr. Justice White for the unanimous court in *Withrow v. Larkin*, *supra*:

> Plainly enough, *Murchison* has not been understood to stand for the broad rule that the members of an administrative agency may not investigate the facts, institute proceedings, and then make the necessary adjudications. The court did not purport to question the *Cement Institute* case, *supra*, or the Administrative Procedure Act and did not lay down any general principle that a judge before whom an alleged contempt is committed may not bring and preside over the ensuing contempt proceedings. The accepted rule is to the contrary . . .

421 U.S. at 53. See also, *Hortonville Joint School District v. Hortonville Education Association*, 426 U.S. 482 (1976). This Court said in *Withrow* that state administrators are assumed to be men of conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances. The same must be equally true of justices of a state's highest judicial tribunal.

The decision below, therefore, is in complete accord with the policy and precedent of this Court.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Respondents respectfully request that the petition for writ of certiorari be denied.

Respectfully submitted,

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First Assistant

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1978

NO. 79-108

MILA K. CAMERON, Petitioner

VS

HON. JOE R. GREENHILL, ET AL.,
Respondents

REPLY TO OPPOSITION

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ATTORNEY FOR PETITIONER

IN THE SUPREME COURT OF THE UNITED STATES

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ATTORNEY FOR PETITIONER

I N D E X

LIST OF AUTHORITIES

CASES:

CASES cont'd

TEXAS CONSTITUTION

UNITED STATES CONSTITUTION

TEXAS CIVIL STATUTES

TEXAS BAR RULES

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1978

MILA K. CAMERON,
Petitioner

VS NO. 79-108

HON. JOE R. GREENHILL, ET AL,
Respondents

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

TO THE HONORABLE COURT:

ONE: INTRODUCTION

A.

This is an appeal from the action of the Judicial hegemony of Texas (Art. II, Sec. 1 and Art. V, Texas Constitution) which began in Cause No. 280,298 in the 53rd District Court of Travis County, Texas (Hon. Pete Lowry, Judge Presiding); was appealed to the Court of Civil Appeals for the Third Supreme Judicial District sitting in Austin, Travis County, Texas,

whose opinion (as distinguished from their judgment) can be found in 577 SW(2) 389 (decided 2/21/79, reh. dend. 2/28/79); and thereafter appealed to the Texas Supreme Court whose decision can be found in 582 SW(2) 775 (decided 5/20/79, reh. dend. 6/27/79).

B.

(1) References to Pet/C p. ____ are to Petitioner's Petition for Writ of Certiorari filed herein on 7/23/79.

(2) References to Opp. p.____ are to Respondents' Brief in Opposition served on the undersigned on 8/15/79.

C.

The respondents are the same persons who form the Texas Supreme Court; BUT they are not (and never were) sued:

1. in their individual capacities;
2. in their "official" capacities as members of the TEXAS SUPREME COURT;
3. in their "official" capacity as members of the Texas Constitutional Civil Court of last resort (Art. V, §§ 3 and 4, Texas Constitution); nor
4. in their judicial capacity.

They were, quite plainly being:

"(b)...sued in their capacity as the regulatory or administrative head of the Legislatively controlled profession of law.

(d) The RESPONDENTS ARE NOT being sued herein in their individual capacities, nor in their capacities as the Constitutionally created Supreme Court (qua Court) of the State of Texas; nor in their capacity as the Judicial Arm of the three branches of Government."

(This is quoted from Paragraph THREE of Plaintiff's Original Petition in this case.)

D.

In this case, the Attorney General represented the above described capacitorial standing of the Respondents, and - at least nominally - the Attorney General purported to represent "the Supreme Court". The Attorney General will be referred to as "AG" for brevity.

TWO: CONSTITUTION AND STATUTES, ETC.

U. S. CONSTITUTION

This case involves the Due Process clause of the 14th Amendment to the Constitution of the United States.

TEXAS CONSTITUTION

This case involves:

Art. II, § 1
Art. V, § 1
Art. V, § 3; and
Art. V, § 4

of the Texas Constituion.

STATUTES

This case involves:

Art. 6252-13a TCS (The APA);
and
Art. 320a-1 TCS (The Texas Bar Act).

(TCS means Texas Civil Statutes.)

RULES

This case involves:

Texas Bar Rules, Art. IV, §4
and
Texas Bar Rules, Art. IV, §5.

THREE: QUESTIONS PRESENTED

The AG, in his first question (Opp. p. 2), misconstrues the problem raised in Petitioner's first question (Pet/C p. 3). Rephrased, the AG's first question is put thus:

> Is the APA applicable to a "decision" of a State Court?

The answer to this question is obviously "NO" and Petitioner will concede this.

And secondarily:

> Is the APA applicable to rule-making by a State Court?

The answer is again obviously "NO". And Petitioner not only will concede that, but already has done so (Pet/C p. 16).

> (That Courts, qua court, can make "rules" for their own operation; or that a Court, qua Court, can make "procedural rules" when such power is properly delegated, is so patent that authoritative decisions would be "icing" and/or certainly surplusage.)

The question here is:

> Whether the APA is applicable to administrative rules made by the members of the Supreme Court who have been delegated the chore of regulating and/or administering the statewide profession of the practice of law (a profession affected with a public interest); and
>
> What is the only manner such delegation is permissible (lawful or constitutional)?

Petitioner's contention from the Trial Court to this Court is:

> The members of the Texas Supreme Court CAN as regulatory and/or administrative head control the Profession of Law in compliance with the Texas Bar Act; BUT

NOT as a Court; because under the LAW OF TEXAS

(which must control)

a Court cannot be delegated such administrative powers.

The AG has refused:

To recognize this question;

But more importantly, the AG has refused to meet it and attempt to answer it.

(NOTE: Logically it becomes rather easy to "beat" a protagonist if, as the opponent, one is permitted to "frame" the protagonist's issues. Although a valid dialectic tool - if undetected and successful - it fails rational, reasonable or logical scrutiny.)

The AG presents the second question (re disqualification) correctly (Opp. p.2 and Pet/C p. 3).

FOUR: THE ARGUMENT AND ANSWER

A.

The AG argues:

(1) The State Court system has construed the "court" exception to "state agency" (see §3[1] APA) to include "justices of courts";

hence the Petitioner's Writ of Certiorari should be denied since the AG's question is settled by State Court interpretation.

(2) The Petition for Writ of Certiorari should be denied because the Texas Court System has no jurisdiction:

Petitioner sued under the APA; and

The APA excepts "courts" from its operation;

Hence, without jurisdiction, no Federal Question can have been presented for consideration.

In support of these arguments, the AG says:

(a) Petitioner never raised such a Constitutional challenge to the scope of the "court" exception to the APA; and

(b) Hence the Texas Judicial hegemony was never given a chance to answer it.

(c) The Petition for Writ of Certiorari should be denied because it presents no conflict with any other decision.

B.

(1) That State Courts interpret the U. S. Constitution, Statutes, Ordinances, Administrative Rules and Regulations or applications of any of the above is always the basis for an appeal or a petition for writ of certiorari to this Court. Accordingly, the fact that Texas gave a judicial interpretation of the "court" exception to "state agency" of the APA is not a reason for denying the Petition for Writ of Certiorari, but rather the issue raised to give substance to the Petition for Writ of Certiorari in this Court.

(2) Furthermore, in conceding, as he did here, that the State Court did rule that the "court" exception included justices and judges regardless of how they acted or in what capacity they acted, the AG impliedly agrees that the issue was before the Texas Judicial hegemony.

(3) Again, the AG misses the point. To determine jurisdiction, the Texas Court System had to:

> (a) assume the facts in Plaintiff's Original Petition were true; Vol. 2, McDonald: TEXAS CIVIL PRACTICE, p.178, §7.07, Ftnt. #18; and

> (b) determine the scope of the "court" exception to "state agency" in §3[1] of the APA.

For Petitioner claimed, in her application to the Respondents for administrative relief that:

> (a) Respondents (Defendants below) were not acting as a Court; and
>
> (b) If not, then they were subject to the APA; and
>
> (c) If they were, Art. 320a-1 TCS was an unconstitutional delegation of power to the Court.
>
> > (All of the above was set out in Petitioner's application for administrative relief made an Exhibit in Plaintiff's Original Petition in this case.)

Without a determination of these questions - the very ones now before this Court - no question of "jurisdiction" could have been (or was) answered by either:

> The Respondents, acting administratively;
>
> The Trial Court;
>
> The Court of Civil Appeals; or
>
> The Texas Supreme Court, acting as a Court.

It seems somewhat amiss of the AG to say that the question presented here was

not before the Courts below since such Courts considered it and disposed of it.

> "It is not essential that the judgment in express terms specifically dispose of each issue. That it does dispose of a particular issue may be inferred from other provisions thereof, provided such inference follow as a necessary implication."
>
> TRAMMELL vs ROSEN,
> 157 SW 1161 (Sup. Ct. 1913)

(4) Again it seems strange that the AG says that these questions were not before the Trial Court since he filed a MEMORANDUM in that Court dealing with the questions raised. Furthermore, in the "Statement of Facts" which is nothing more than the legal arguments made to the Trial Court, the AG himself spent from pages 2 through 8 arguing the very questions he now says were not before the Trial Court.

(5) Again the Texas Supreme Court admitted that it did not act as a Court when it rejected its subordination to the APA:

> "It is the position of the Court that its regulation of the practice of law, while not involving the decision of a case or controversy, nevertheless is a judicial function to which the Administrative Procedures and Texas Register Act (Article 6252-13a, V. T. C. A.) does not apply."

See Appendix I of the Petition for Writ of Certiorari filed herein.

In short, the implication is plain. It was acting administratively.

> (In support of this, see STATE vs SEWELL, 487 SW[2] 716 [Sup. Ct. 1972], a lawyer-discipline case, where the Court noted that it was charged with "making rules and regulations" for disciplining lawyers, and it had "professional policing duties". See also TEXAS HOUSE JOURNAL PROCEEDINGS, Wednesday, Jan. 31st, 1979, Fourteenth Day, where the Chief Justice of the Texas Supreme Court told the Texas Legislature that the Court had "many administrative duties" re the governance of the profession of law.)

(6) BUT the Texas Supreme Court has consistently held that <u>when Courts act administratively, they do not act judicially</u>:

JONES vs MARCH	224 SW(2) 198
STATE vs BUSH	253 SW(2) 269
STONE vs LCB	417 SW(2) 385

Cf. the Court of Criminal Appeals holding in DAVENPORT vs STATE, 574 SW(2) 73 (1978).

> (The Texas Court of Criminal Appeals is the co-equal sister Court of the Texas Supreme Court; see Art. V Texas Constitution. When the Court of Criminal Appeals rules first - either on a criminal or civil matter - the Texas Supreme Court honors such ruling as necessary to the proper administration of justice, SHRADER vs RITCHEY, 309 SW[2] 812 [Sup. Ct. 1958].)

In DAVENPORT, the Court of Criminal Appeals, after citing cases to the effect that "res judicata" did not apply to administrative decision-making, held that supervising probationers was an administrative function and not judicial; and "revocation" was administrative "in nature" and that "res judicata" did not apply.

ACCORDINGLY, it is clear that administration by Courts

(other than Court administration; i.e. dockets, dress, criminal contempt, etc.)

is not a judicial function (Cf. MUSKRAT, 55 LE 246).

(7) BUT in this case, the Court of Civil Appeals held that regardless of in what capacity a Court acts, it is excepted from the APA for not being a "state agency" 577 SW(2) 589, and the Application for Writ of Error to the Texas Supreme Court was simply "REFUSED", which means that the Texas Supreme Court agreed with what the Court of Civil Appeals said and did; see Rule 483, TRCvP.

(8) A Court can only be a "Court" when it sits at a given time and place to decide a case or controversy.

(This is the LAW OF TEXAS on the point. See Vol. 1, McDonald: TEXAS CIVIL PRACTICE, p. 22, §1.02.)

(9) Judges are not Courts. One is an officer, the other a judicial assemblage, ibid. Only when a Judge sits as a Court may he be called a "court" - otherwise, he is not. See HENDERSON vs BEATON, 52 Tex 291 (1879); HENNE & MEYER vs MOULTRIE, 77 SW 607 (Sup. Ct. 1903); PITTMAN vs BYARS, 101 SW 789 (Sup. Ct. 1907); COUTURIE vs CRESPI, 131 SW 409 (Sup. Ct. 1910). See discussion in Ex Parte LOWREY, 518 SW(2) 897 (CCA. Beaumont, 1975, No Writ History). Cf. 20 AJ(2) Cts. §1; 43 AJ(2) Judges §3; 43 ALR 1516, 1558, supp. in 18 ALR(3) 572, 589.

(10) Now if a Court does not function judicially, if it acts administratively, then it can only be that its judges or officers do the administration, not the Court, qua court.

(11) And unless such judge (or judges) are specifically exempt from the APA, the APA governs.

(Ex.g., Art. 2328a TCS creates the TEXAS CIVIL JUDICIAL COUNCIL, an administrative body charged with the study of courts; rules; practices; discretionary powers of courts in order to curtail inefficiency; with receiving suggestions re faults of the administration of justice; to gather statistics; to report; to investigate matters sent them by the Courts or Legislature; and hold meetings [Sec. 5].

The Chief Justice of the Texas Supreme Court, two Judges of Court of Civil Appeals level, two presiding Judges of administrative districts; the Chairman and immediate past chairman of the Senate Jurisprudence Committee, the Chairman and immediate past chairman of the House Judicial Committee are on the Council [Sec. 3]. In addition, seven members of the Bar and two non-licensed laymen make up the Council [Sec. 4].

This Council is subject to the APA despite its constituancy of five Judges.)

(12) The conflict is now patent. The LAW OF TEXAS is that judges, if they are not acting as courts, can be and are subject to the APA when acting administratively. The LAW OF TEXAS is clear that administrative duties cannot be given to the COURTS, qua Courts, unless the same is Constitutionally imparted to them. Ex Parte HUGHES, 129 SW(2) 270 (Sup. Ct. 1939), and In Re HOUSE BILL #537, 256 SW 573 (Sup. Ct. 1923).

(The EICHELBERGER vs EICHELBERGER case, 582 SW[2] 395 [Sup. Ct. 1979] is an amorphism.

A. It dealt with the effects of HISQUERDO vs do, 59 LE[2] 1 on Texas law.

B. The Discussion of jurisdiction by the Court was unnecessary since the Texas Supreme Court had jurisdiction under Art. 1728[6] TCS and their subordination to the rulings of this Court, EMMONS vs PACIFIC INDEM. CO., 208 SW[2] 884 [Sup. Ct. 1948]. Cf. LANGDEAU vs REP. NAT. BK., 341 SW[2] 161 [Sup. Ct. 1961], reversed by 9 LE[2] 523; cf. Art. VI US Constitution.

C. EICHELBERGER was handed down on 5/23/79, reh. dend 7/11/79 while this case was pending.

D. None of the dicta in EICHELBERGER is apposite to this case and the case itself deals with divorce matters.

E. Ftnt. #1, which deals with "inherent powers", is inapposite also as a reading of the cases will attest - they [like Art. 1911a TCS cited therein] deal with "inherent powers" of individual courts to regulate the practice of law before such courts; they do not deal with "inherent powers" of the Supreme Court to control the statewide profession of law.)

C.

Petitioner:

(1) Does not deny the Legislative power to control the profession of law; see GOLDFARB vs VA. BAR, 44 LE(2) 572 (1975) and LEIS VS FLYNT, 58 LE(2) 717 (1979) where it was said:

"The States prescribe the qualifications for admission to practice and the standards of professional conduct."

(2) Does not deny that the Legislature can delegate such control to the nine justices that are identified as being the Texas Supreme Court.

But Petitioner:

(1) Does deny that the Legislature has power to confer the control of the statewide practice of law on the Texas Supreme Court (qua Court).

(2) Does deny the power of the Texas Supreme Court (qua Court) to pass and impose a RULE OF SANCTION on Petitioner for failure to pay the special assessment set out in the Pet/C p. 14 and Appendix D and F.

Petitioner sought the only pre-deprivation relief she had; one given her by the State of Texas - BUT, she was denied it by the Texas Judicial hegemony because they said the action arose under the APA and, as Courts, they were not subject to the APA. To do this, they had to find that:

(1) The legislative delegation under Art. 320a-1 TCS was to the Court qua court;

(2) For only then would the Texas Supreme Court not be within the APA.

(It is pertinent to note here that the LAW OF TEXAS is clear on Statutory interpretation and construction. First, the Plain Meaning Rule obtains, Ex Parte ROLOFF, 510 SW[2] 913 [Sup. Ct. 1974]. Second, all statutes are to be presumed constitutional, SMITH vs DAVIS, 426 SW[2] 827 [Sup. Ct. 1968]; ALOBAIDI vs STATE, 443 SW[2] 440 [Ct. Crim. App. 1968], cert. dend. 21 LE[2] 281 and the more recent case of ELY vs STATE, 582 SW[2] 416 [Ct. Crim. App. 1969]. Third, only a constitutional construction of a statute will be sustained [honored] by Texas Courts, McKINNEY vs BLANKENSHIP, 282 SW[2] 691 [Sup. Ct. 1955]; ALOBAIDI, supra; and ELY, supra. See also 53 TJ[2] 225 and 277, Stats. Secs. 158 and 184.)

D.

Again, the AG dissimulates when he says that Petitioner challenges "the legality of such fee" and therefore, this Court's prior rulings on the validity of BAR control disposes of the questions.

The Petitioner does not challenge the validity of the fee per se.

(In her original request for administrative relief and her ORIGINAL PETITION, one claim was the invalidity of the fee, but this point

rapidly evaporated. The main point made clear at pages 36-37 of the Statement of Facts and quoted at Appendix L of the Pet/C was the point made in the Pet/C and here.)

The Petitioner does challenge the Texas Supreme Court's RULE OF SANCTION, both as to its inception and as to its imposition.

Petitioner made this contention before the Texas Supreme Court when she applied for administrative relief; in her Original Petition before the Trial Court; in her Appellant's Brief before the Court of Civil Appeals; and in her Application for Writ of Error before the Texas Supreme Court.

Petitioner was denied a right legislatively given her which was entitled to enforcement, LEIS, supra, and cases cited at 59 LE(2) p. 721. She brought the matter up properly and exhausted her state routes. If the cases between DUNCAN vs McCALL, 35 LE 219 (1891) through MOORE vs SIMS, 60 LE(2) 994 (1979) mean anything, abstention is not applicable since the Judicial hegemony of Texas had their chance, but failed to afford Petitioner a full and fair adjudication (cf. Ex Parte HAWK, 88 LE 572 [1944]).

E.

Which brings us to the teachings of In Re MURCHISON, 99 LE 942 (1955).

(1) The Texas Supreme Court in 582 SW(20 775 answered Petitioner's request for a fair (due process) non-polluted Court by measuring themselves against their prior embraced duty-to-sit rule.

(Duty-to-sit unless barred by Statutory or Constitutional inhibitors.)

(2) Both the inception and imposition of the RULE OF SANCTION began with the same NINE JUSTICES administratively that eventually ruled on it judicially.

(3) For any judge or justice to act in one capacity and then rule on that action judicially is contrary to the teachings of MURCHISON.

(4) Neither WITHROW vs LARKIN, 43 LE(2) 712 (1975) nor HORTONVILLE vs ED. ASSN., 49 LE(2) 1 (1976) dealt with this question. Both cases dealt with pre-factual-pollution of an Administrative Board before quasi-

adjudicative action by the same administrative board. They did not deal with judicial apellate hearings by the same people who ruled adjudicatively as an administrative board.

(5) MURCHISON dealt with judicial action by the same judge who acted as a grand jury.

(6) MURCHISON is the same breed of case as JOHNSON vs MISSISSIPPI, 29 LE(2) 423 (1971) and the cases it cites (Judicial action by a judicial victim of contumacy); and WARD vs MONROEVILLE, 34 LE(2) 267 (1972) (judicial action by Mayor responsible for City's income).

(7) Fairness of adjudication is essential to due process and an "unbiased judge" is essential to due process. But "to perform its (fair trial's) high function is the best way 'justice must satisfy the appearance of justice' Offutt v. United States, 348 US 11, 99 Led. 11, 75 S Ct 11." MURCHISON, supra.

(8) Here the Texas Supreme Court ruled as an administrative body that the courts were not subject to the

APA. This was appealed - as the Petitioner had the legislatively given right to do - to the Court System of Texas. Through this System the appeal eventually came to the same body (with different robes) for a judicial decision.

(9) In the interest of the appearance of justice (if not for the interest of making their own administrative ruling "good"), the Texas Supreme Court should have disqualified themselves - BUT, they did not - thereby denying Petitioner due process of law.

THE PRAYER of the Petitioner in her Application for Writ of Certiorari is hereby renewed.

RELIEF IS RESPECTFULLY PRAYED.

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